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Michigan District Judges Association



October 31, 2006

Mr. Corbin R. Davis, Clerk
Michigan Supreme Court
P.O. Box 30052
Lansing, Michigan 48909

RE: Administrative Files 2005-19, 2006-05, 2004-48

Subject: Comment of the Michigan District Judges
Association

Dear Mr. Davis:

The Michigan District Judges Association (MDJA) considered Administrative Files 2005-19, regarding jury rules; 2006-05, regarding rights to court appointed appellate counsel; and 2006-48, regarding court reporters. The following are the comments approved by the MDJA Board on October 20, 2006.

Administrative File 2005-19:

The MDJA supports the effort to consolidate the civil and criminal jury procedures. We recognize that some of the proposals challenge time-honored practices of the bench and bar. However, we also recognize that innovation can improve both the administration of justice as well as the way the courts are viewed by the public, from where we draw our jury pools. In this spirit, the following are the comments of the MDJA with respect to what we believe are the more significant proposed changes. The rule numbers used below refer to the proposed rule:

MCR 2.513 The MDJA supports the concept of including the elements of the civil cause of action or criminal charge. However, we are concerned that providing written copies of the preliminary instructions may be more disruptive and distracting than beneficial. This may be especially true in district court matters when the trials are relatively short and time dedicated to

the trial is relatively narrow. It is our suggestion that this latter provision be optional with the trial judge.

MCR 2.513 (E) This proposed rule provides for the use of reference documents or notebooks, and mandates that the court "must encourage" this use. The concern of the MDJA is two fold. The first is the expense and delay that could be caused, especially at the district court level where the nature of the charge or action may not command the necessary resources. Secondly, this proposal seems to envision the use of documents not admitted into evidence. We recognize that this may be a useful tool for litigation and jury involvement, especially in complex litigation; but we recommended that it be optional with the court, especially at the district court level.

MCR 2.514 (F) This proposed rule provides for the use of deposition summaries in the place of direct testimony. The MDJA is concerned with the use of non-sworn characterization of testimony in the place of actual testimony itself, and does not support this without consent of the parties.

MCR 2.513 (G) This proposed rule introduces the concept of presenting expert witness testimony in a manner that would appear to be much different from the traditional trial procedure and adversary process. This may be a useful tool in complex litigation. However, the MDJA would oppose this unless it was conditioned on a stipulation of the parties.

MCR 2.513 (J) This proposed rule allows jurors as well as the court or parties to request a view. The MDJA opposes on the basis that the current procedures for jury view are preferable.

MCR 2.513 (K) This proposed rule allows juror discussion of the pending case prior to deliberation. This is a sharp departure from traditional practice, and the MDJA strongly opposed because it is concerned that such discussions could deprive a party, usually the defense, of a fair trial.

MCR 2.513 (M) This proposed rule reviews the courts authority to comment on the evidence. Although this is essentially the same as the existing rule, the MDJA feels that it is generally not a good practice; and, if allowed at all, it should only be for good cause stated on the record.

MCR 2.513 (N) This proposed rule addresses final instructions by the court to the jury.

The MDJA opposes the requirement of MCR 2.513 (N) (2) that the court solicit questions from the jury at the close of the instructions, but before the jury has had an opportunity to deliberate. This may be a beneficial option under the particular circumstances of a case, but should not be a requirement. In light of the requirement of MCR 2.513 (N) (3) that the court provide written instructions to the jury to take into deliberations, most questions may be resolved in that manner.

The MDJA supports the provision of MCR 2.513 (N) (3) that the court provide the jury with written copies of the final instruction; with the provision that there should be an option to supply a limited or abridged copy, such as the elements only, on stipulation of the parties.

The MDJA is concerned with the provision of MCR 2.513 (N) (4) that allows the judge to assist a deadlocked jury by having the jury list the issues that divide them so that the judge may clarify the instructions. This appears to invite the judge to intervene in what are traditionally confidential deliberations.

The MDJA fully supports the efforts to update and modernize the jury rules so as to provide a more effective process. Our comments are meant to reflect our concern for the rules of evidence and to preserve the fairness of a jury trial, as well as judicial efficiency.

Administrative File No. 2006-05

This administrative order addresses MCR 6.610(3) and 6.625(B) as they relate to the appointment of counsel in criminal matters on appeal. These proposed revisions reflect the recent decision of the United States Supreme Court in the case of *Halbert v Michigan*.

The MDJA is concerned about the cost impact on the already strained and under funded system of court appointed counsel. This is especially significant in circumstances of locally funded third class district courts. Although the proposals with respect to the requirements court appointed counsel on appeal are a response to a United States Supreme Court mandate, the MDJA suggests that the funding issue be addressed. One way this could be addressed is 1.) to provide a definition of "indigence" so as to require an appointment; and 2.) to specifically provide for a mechanism for the recovery of contribution or partial restitution in misdemeanor cases.

It is noted that the current rules do address factors to be considered to determining indigence; MCR 6.005(B); but it does not provide a definition. The rule also provides for partial indigence, and the recovery of contribution toward the cost of representation, 6.005(C). However, these rules do not apply to the district court.

It is recommended by MDJA that the court rules provide a definition or standard of indigence and that the district courts be allowed to recover contribution for the cost of appointed counsel to the extent a defendant is financially able. This could be accomplished most simply by including MCR 6.005(B) & (C) in those rules specifically extended to district court misdemeanor proceedings under 6.001(B). In addition the MDJA suggests that the Court consider a more detailed procedure for defining indigence and the recovery of contribution by the court.

10-31-'06 16:59 FROM-21st District Court

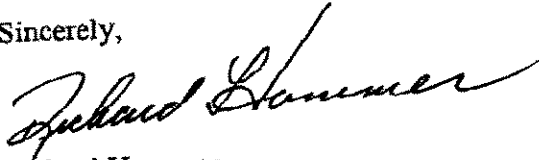
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Administrative File No. 2004-48

This file proposed a change in MCR 8.103 regarding court reporters, recorders, operators and voice writers. The MDJA has no objection.

Sincerely,



Richard Hammer
Chairperson Rules Committee
Michigan District Judges Association

RH/dw